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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/086,557	02/28/2002	Samuel W. Ho	UHGK:159US	5091
33425 7590 04/30/2008 FULBRIGHT & JAWORSKI L.L.P. 600 CONGRESS AVE. SUITE 2400 AUSTIN, TX 78701				
EXAMINER				
LE, LINH GIANG				
ART UNIT		PAPER NUMBER		
3626				
MAIL DATE		DELIVERY MODE		
04/30/2008		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/086,557

**Applicant(s)**

HO, SAMUEL W.

**Examiner**

MICHELLE LE

**Art Unit**

3626

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 07 January 2008.  
2a) ☒ This action is **FINAL**. 2b) ☒ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-9, 19-22, 26, 28, 30-47, 53 and 55-61 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 1-9, 19-22, 26, 28, 30-47, 53 and 55-61 is/are rejected.  
7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.  
10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_  
5) ☐ Notice of Informal Patent Application  
6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### *Notice to Applicant*

1. This communication is in response to Remarks filed 07 January 2008. Claims 10-18, 23-25, 27, 29, 48-52 and 54 have been canceled and claims 1-9, 19-22, 26, 28, 30-47, 53, and 55-61 remain pending.

### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-9, 19-22, 26, 28, 30-47, 53, and 55-61 remain rejected under 35 U.S.C. 103(a) as being unpatentable over Lockwood (5,706,441) in view of Pack-Harris (6,195,612) for substantially the same reasons as the Office Action dated 09 July 2007 and previous Office Actions.

### ***Response to Arguments***

4. Applicant's arguments filed 01/07/08 have been fully considered but they are not persuasive.

5. Examiner has now applied the same two references through numerous rounds of prosecution. Applicant has previously made various arguments as to whether Lockwood in view of Pack-Harris teaches the limitations taught in the claims which Examiner has addressed in Office Actions dated 11/03/06 and 07/09/07. Examiner incorporates those arguments here as well.

6. Applicant specifically argues in the 1/07/08 Response that Pack-Harris fails teach a particular level of dosing of medication was prescribed, frequency of diagnostic testing when prescribing antibiotics, a safe dosing measure, or an overuse of antibiotics measure. As per the argument Pack-Harris fails to teach a particular level of dosing of medication prescribed, Examiner refers to Figs. 17-29 which show various dosings of prescription medication and the number of prescriptions. This clearly reads on the frequency of a particular level of dosing a medication was prescribed.

7. As per the argument that Lockwood in view of Pack-Harris fails to teach the frequency of diagnostic testing, Examiner repeats the same arguments as stated in the original 03/13/06 Office Action. As per claim 19, Lockwood does not expressly teach a measure indicating the frequency with which appropriate diagnostic testing was performed when prescribing antibiotics for a condition, wherein the quality rating tool is used to select an entity for providing health care services to a health care consumer. Lockwood does teach a tool that contains a data record corresponding to a sickness

episode for which health care services were performed (Col. 5, lines 61-64). The frequency with which a diagnostic testing was performed would be information in a data record corresponding to a sickness episode.

8. Finally, as per the argument that Pack-Harris fails to teach a safe dosing measure or overuse measure, Examiner disagrees. As stated in earlier correspondence, claim language is to be given its broadest reasonable interpretation. Therefore, Pack-Harris Figs. 17-29 indicate a number of dosing levels that are being tracked. One of ordinary skill in the art could interpret these various dosing levels as "safe" or "overuse" depending upon the condition.

### ***Conclusion***

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michelle Linh-Giang Le whose telephone number is 571-272-8207. The examiner can normally be reached on 8 AM - 5PM, M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Luke Gilligan can be reached on 571-272-3600. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Michelle Linh-Giang Le/  
Examiner, Art Unit 3626  
LLE

/Robert Morgan/  
Primary Examiner, Art Unit 3626